

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5722 of 1994

Criminal Misc.Application No.751 of 1995

Criminal Misc. Application No.933 of 1995

with

Criminal Misc. Application No.1365 of 1995

Sp.Criminal Application No.372 of 1995

Sp.Criminal Application No.436 of 1995

with

Criminal Misc. Application No.1367 of 1995

Special Criminal Application No.527 of 1995

Special Civil Application No.13258 of 1994

For Approval and Signature:

AA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

MITESHCHANDRA MANTIA

Versus

STATE OF GUJARAT

Appearance:

Cr.MA 5722/94

Mr.A.D.Shah for the petitioner

Cr.MA 751/95 & SCR.A 372/95

Mr.K.K.Nair, L.A. with Mr. Arun Mehta, Sr.Counsel for the petitioners

SCR.A/436/95 & Cr.MA 933/95

L.A.Mr.K.B.Anandjiwala for the petitioners

Scr.A No.13258/94-Party-in person

In all matters, Mr.D.N.Patel, 1d.APP for the respondent-State.

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 14/08/97

ORAL JUDGEMENT

In all these petitions, the question involved is revolving around the events that took place in Dakor Court, District Kheda. It was reported in newspaper and lateron substantiated that in the said Court, warrants are being issued against any one and every one, just for asking and all that has to be done is to file a complaint of whatsoever nature.

2. The events involving the Presiding Officer of Dakor Court is referred to in the aforesaid brief manner because, as a fall out of what happened in Dakor Court, there came to be filed a complaint against persons involved in some of the complaint in different police stations alleging offences under Sections 120-B, 181, 182, 205, 211, 465, 468, 469 all of Indian Penal Code. In first of the aforesaid matters namely Cr.M.A.No.5722 of 1994, a complaint came to be registered for the aforesaid offences at Dakor Police Station, as Crime Register No.I 211/94. The offence was registered under the instructions of the Senior Police Sub-Inspector of Dakor and an intimation to that effect was sent to Dakor Court. Lateron, the learned Magistrate of the Court was informed that, during investigation offence under Sec.471 is disclosed and likewise, offences under Sections 416, 196, 418, 419 and 466 are also disclosed though except for 416 the remaining offences were already disclosed earlier.

3. In Criminal Misc. Application No.751 of 1995, grievance is made about registration of an offence with Baroda CID Crime, District Baroda against as many as 19 accused, 11 of whom are staying in Maharashtra, Ulas Nagar, Thane. The offences disclosed thereunder were 489, 348, 465, 466, 468, 471, 474, 409, 410, 109, 118, 167, 182, 114, 115, 219, 220, 506(2), 193, 195, 196, 199, 209, 200, 205, and 211, all of Indian Penal Code. The said offences came to be registered with Baroda CID-Crime as I 1 of 1995. That very complaint is the subject matter of challenge in Special Criminal Applications No.372/95, 436/95 and 527/95.

4. In matters at serial no.3 & 5, applications for amendment were filed and they will not survive in view of the present order.

5. Virtually, therefore, what is required to be considered is the request made in all these petitions as to quashing of 2 different FIRs., one is the FIR registered with the CID Crimes, Baroda as I 1/95 and the other is the FIR registered with Dakor Police Station CR I 211/94.

6. When both the FIRs are read together, essentially they come down to what happened in the Court at Dakor on different dates when different complaints came to be filed and processes came to be issued.

7. The different Sections mentioned in the respective FIR would clearly indicate that the grievances made in these two complaints relate to the judicial process initiated in form of different complaints in the Court of Judicial Magistrate, 1st Class, Dakor. The allegations are to the effect that for getting the process issued in different complaint, forged documents are used and the Court has been misled to issue processes on the basis of these documents.

8. In this background, it was submitted that if at all any offence has been committed, punishment under Sec.172 to 188 or 193 to 196, 199, 200, 205 to 211 and 228 IPC, in either event, under Sec.195 of Cr.P.C. will be attracted.

9. So far as the offence under Sec.193 to 196, 199, 200, 205 to 211 are involved along with Sec.228 of Indian Penal Code, the complaint has to be lodged by the Court where these offences are committed and same is the situation with regard to offences under Sections 463,

471, 475, 476. The latter category of the offences are required to be similarly dealt with under Sec.195, when offences alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court. Naturally, criminal conspiracy to commit or attempt to commit or abetment of any offences mentioned above, will have to be similarly dealt with under Sec. 195 of the Code of Criminal Procedure. This, in short, is the summary of Clause (b) of Sec.195. The submission, therefore, is that unless the Court has decided to proceed under Sec.195, the police authorities themselves cannot receive the complaint registering the offences in cases where offences are cognisable and some of the offences are cognisable on their own. In this regard, Sec.340 of the Cr.P.C. is also of great relevance. The said Sec.340 is to be found in Chapter XXVI of the Code and its heading is provisions as to offences affecting the administration of justice. A particular procedure is prescribed to be followed in cases mentioned in Sec.195. This procedure is to be followed by the concerned Court in respect of whom or in respect of a proceeding dealt with by which the offence is found to have been committed *prima facie*.

10. Thus, the situation is that by that very Court in respect of whom or in respect of a proceeding pending in the Court, the offences are said to have been committed, as described in Sec.195, unless the procedure is followed, no action can be initiated resulting into conviction of an accused to be dealt with thereunder.

11. In this background, the learned Advocates appearing for different petitioners in the aforesaid matters, have strongly urged that the impugned action of these two police stations have to be considered and even if some of these offences or all of them, are found to be described as cognisable offences in the 1st Schedule to the Cr.P.C. further question is to be considered whether they can take cognisance thereof and register the offences.

12. This is purely a question of law and there is hardly any controversy as to the various complaints having been filed in Dakor Court, the impugned two complaints relating to said alleged activity in the Dakor Court and FIR for that purpose, having been registered respectively at Dakor Police Station and CID Crime, Baroda.

13. Shri Arun Mehta, leading the submission on behalf of various petitioners strongly urged that the very basis

of the Cr.P.C. of providing the hierarchy of Courts, on one hand and regulating the police powers, on the other, would indicate that the police machinery is there to assist the Court, in its enquiry, as to whether the crime has been committed or not. The Court shall do so, in accordance with the provisions of Cr.P.C. , Indian Evidence Act and other related legal provisions. Before the Court embarks upon this enquiry where these provisions will be applicable in a given case and where either the Court decides to take assistance of the police by passing orders as to enquiry under Sec.204 or Sec.156(3) of Cr.P.C. or in cases where the offences are cognisable, the police themselves decide to do so, the final outcome of this investigation will land up again in the Court of appropriate jurisdiction for being dealt with for the aforesaid purpose of inquiry as to whether the offence alleged against the accused is made out or not? In case the decision is in favour of the prosecution, the order of conviction will be passed and sentence will be awarded failing which order of acquittal will be passed.

14. It is, therefore, clear that whether an offence is cognizable or not, whereever, an assistance is taken of the police and in cases where cognisable offence is disclosed in either event, the efforts of the police will come before the competent Court under the code of Criminal Procedure, resulting into either of the said two consequences. In this background, it cannot be said that the power of the police to take cognisance is wholly independent of what is to happen to the result of their investigation in the Court.

15. Shri Arun Mehta, further elaborated his submission to the effect that, if they (police are to be treated as independent, then the embargo put on the power of the Court by the provisions like Sec.195 will lose their significance completely. Whether the Court can proceed or not, the investigating agency like Dakor Police Station and CID Crime at Baroda, as found in the instant case, can continue their investigation, though the result thereof will be zero, because the fruit of their investigation, in form of a chargesheet or a police report when filed before a competent Court, will result into nothing because Section 195 will stand attracted.

16. In the aforesaid background, it is quite obvious that the submission of Shri Mehta deserves to be accepted. The present Scheme of administration of criminal justice, as regulated by the Criminal Procedure Code, clearly makes the police authorities to be

sub-servient to the ultimate result of judicial inquiry by a competent Court holding the accused guilty or not guilty. It, therefore, cannot be permitted when a situation is sought to be created by the police authorities in form of registration of those offences, as disclosed by the said two complaints, that they may go on investigating the offences, while the very complaints in respect of which offences are alleged in the complaints before these two police authorities are themselves pending and the Court has yet to come to a conclusion whether it should exercise its power under Sec.195 read with Sec.340 of Cr.P.C. This alone, in my opinion would have been enough to allow the matters.

17. Shri A.D.Shah and Shri K.B.Anandjiwala, 1d.Advocates, on their part, had made considerable research in this field and they have cited series of decisions which are very apposit and therefore, they will now be discussed one after another.

17.1 1992 Cr.L.J. 354 Punjab and Haryana:
(Sardulsingh vs. State of Haryana)

Page 5 of the said judgment read with the facts of the case makes it clear that even investigation by the police is barred, if the alleged offences are covered by Sec.195 to be read with Sec.340 Cr.P.C. There, the allegation was that in filing written statement impersonation was perpetuated on the Court by the defendant in a civil suit. A complaint was lodged. No doubt, a submission was made therin that offences alleged are under Sections 205, 209, 461, 468, 471 Indian Penal Code and therefore, except for Sections 205 and 209, the rest can be investigated by the police. The answer was that they are overlapping and unless the facts constituting the offences under Sections 205 and 209 are made out and dealt with under Sec.195 read with Sec.340, offences relating to remaining sections also cannot be investigated. Para 8 of the said judgment, discusses the ambit and scope of Sec.340 Cr.P.C.

17.2 1986 Cr.L.J. 392 Kerala: (K.Ramakrishnan vs. Station House Officer, Hosdurg Police Station)

A noncognizable offence under Sec.212 of false complaint was filed before a Magistrate and he issued order to the police, who in turn, reported offence having been made out. The learned Magistrate decided to proceed as per the said report of the police. This complaint was quashed as provisions of Sec.195 read with Sec.340 were not complied with. In this connection, definition of the word "complaint, as given in Sec.2 cl.(b) of Cr.P.C. was also considered and more particularly the explanation

thereof where report made by a police Officer disclosing offence was also dealt with.

17.3 1992 Cr.L.J. 680 AP: (Kodati Ramana alias Venkatarama Rao vs. The Station House Officer, Penpahad Police Station.

Private complaint was lodged for offences under Sections 192, 193, 423, 465, 466, 467 and 468. Considering the implication of Sec.195, complaint was quashed except for offences under Secs.423 & 468. Originally, enquiry under Sec.156(3) was directed and the report thereunder was received. That report was held to be illegal for offences other than the one under Sections 425 and 468. This is discussed in para 23 of the judgment.

17.4 1990 Cr.L.J. 1583 Orissa: (Manoranjan Khatua vs. State of Orissa)

In this case the offences are under Secs.466, 471, IPC as also 419 in relation to a judicial proceeding and therefore, in absence of a complaint being registered, proceedings were quashed and with regard to Sec.419, it was clearly held that it cannot be separated from the evidence under Sec.466, 471, as disclosed in paragraphs 4 & 5 of the judgment.

17.5 The Honourable Supreme Court had also an occasion to deal with similar situation as per the case reported in 1983 SC 1053 (Gopalkrishna Menon vs. V.D.Raja Reddy. There the offences were the one under Sections 467, 471, 416 read with Sec.34. As they related to pending matter before a Court, there being no complaint as required under Sec.195, it was held to be barred. This was a case where alleged fraudulent receipt was produced in a Civil Court.

17.6 1995 Cr.L.J. 1603, Punjab and Haryana: (Parasram vs. State of Haryana)

It is on the same line as stated in the Supreme Court decision.

17.7 1990 Cr.L.J. 495 Allahabad: (Parohiram vs. State of Uttarpradesh).

Proceedings for mutation were pending before a competent Court where sale deed said to have been executed was in question. Alleging that the deed is forged, a complaint was filed and order of inquiry under Sec.156(3) was passed. This was held to have been barred by Sec.195 of Cr.P.C.

18. The result, therefore, is that according to these

various judicial pronouncements, the power either of the Court to proceed or that of the police authorites to take cognizance, will clearly be barred unless procedure under Sec.195 read with Sc.195 read with Sec.340 is implemented in its entirety.

19. No doubt, as submitted by learned APP Mr.D.N.Patel that if the grievance made in a complaint is that of forgery of documents committed before starting the proceedings before a Court, cognizance of such an offence is not invalid, eventhough the concerned Court has not filed any complaint. It is obvious that, by very nature, this is an offence where irrespective of pending proceedings, the alleged offender is answerable because the offence is completed. Its use in a pending Court proceedings is subsequent to the completion of that offence and if at all the use thereof results into any further offence, it may be dealt with under Sec.195 read with Sec.340 by a competent Court.

20. In the case, in form of these petitions, it is clearly the position that by filing different complaints, pursuant to an alleged conspiracy, by different persons impersonating as persons other than who they are, processes were got issued and the different alleged offences in the said two complaints have thus been committed. It is obvious that the different alleged offences are the result of one and the same transaction or in course of the same transaction. As per the aforesaid different judicial pronouncements, there might either be, overlapping or it will be so interconnected or interwoven that they cannot be separated. Obviously, therefore, neither the police station at Dakor nor the CID Crime, Baroda could have taken cognizance of the complaint, as done by them, because that action will be hit by Sec.195 Cr.P.C. read with Sec.340 thereof.

21. So far as petition No.13258 of 1994 is concerned, it was being contested by the party-in-person.Unfortunately during the pendency of the petition, the party-in-person i.e. the petitioner expired. However, since the matter is tied up along with aforesaid other matters, and the facts being also similar, this petition also shall meet with the fate of other petitions.

21. The petitions are, therefore, allowed. Both the complaints are quashed and cognisance of offence taken by the respective police stations is set aside. As a consequence, the chargesheet that has been filed in the matter covered by Criminal Misc.Application No.5722 of

1994 in CR No.I 211/94 shall also stand set aside. Rule,
in all matters, is made absolute accordingly.

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